

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID MIDDLETON,

Petitioner,

vs.

STATE OF ALASKA

Respondent.

Case No. 3AN-17-09317 CI

**DECISION ON REMAND**

This matter was remanded to this court for two purposes: (1) to determine whether there are new facts that change its decision in this case; and (2) if so, whether these new facts raise new legal issues.

1. *There are new facts that change the court's analysis, but not its decision*

The parties agree that there was a December 16, 2015, parole revocation hearing that was not before the superior court when it denied David Middleton's ("Petitioner's") application for post-conviction relief.<sup>1</sup> The parties further agree that—under the law at the time—Petitioner's maximum release date was validly extended to December 29, 2019 at the December 2015 parole revocation hearing.<sup>2</sup>

---

<sup>1</sup> Pet'r's Br. on Retroactive Application of AS 33.16.[220](i) as Am. by Senate Bill 91 at 2; Respondent's Br. Regarding Retroactive Application of AS 33.16.220(i) at 1.

<sup>2</sup> *See id.*

At issue when the superior court denied Petitioner's PCR application in 2018 was whether Petitioner's maximum release date was legally extended to June 13, 2019, under AS 33.16.220(i), as amended by Senate Bill 91 ("SB 91")—effective January 1, 2017—at a September 6, 2017, parole revocation hearing. Since the December 16, 2015, parole revocation hearing legally extended Petitioner's maximum release date to December 29, 2019, the issue of whether it was legal for the Board of Parole to extend Petitioner's maximum release date to June 13, 2019, under SB 91 is moot—unless SB 91 was intended by the legislature to retroactively apply to the December 2015 parole revocation hearing.

2. *Under Senate Bill 55—specifically SLA 2017, ch. 13, § 30—SB 91 does not affect parole revocation proceedings that took place prior to January 1, 2017*

Petitioner argues that when a statute contains an “applicability clause,” where the legislature expressly states that it applies “before, on, or after” a certain date, it must be construed as expressly retroactive.<sup>3</sup> Petitioner argues that because SB 91 contains such an applicability clause, it must be construed as retroactive, and the question of whether the December 2015 parole revocation hearing legally extended Petitioner's maximum release date can only be answered by analyzing whether that hearing complied with SB 91. The court disagrees.

Although Petitioner is correct that *Stoneking* supports his contention that “before, on, or after” language in an applicability clause is ordinarily strong evidence that the

---

<sup>3</sup> Pet'r's Reply to State's Br. Regarding Retroactive Application of 33.16.220(i) (citing *Stoneking v. State*, 39 P.3d 522, 523 (Alaska Ct. App. 2002)).

legislature intended a statute to be retroactive, that is because “before, on, or after”—without restriction—plainly encompasses the past, present, and future.<sup>4</sup> However, in section 30 of SB 55—SLA 2017, ch. 13, § 30—the legislature qualified SB 91’s applicability clause. Section 30 of SB 55 provides in relevant part:

Nothing in the provisions of AS 33.16.220(i) may be construed as invalidating a decision of the Board of Parole issued before January 1, 2017, that extended the period of supervision beyond the maximum release date on the original sentence.<sup>5</sup>

On its face, SB 55 did not prevent AS 33.16.220(i), as amended by SB 91, from invalidating a decision of the Board of Parole issued before January 1, 2017, that extended a *maximum release date*, but this is unsurprising considering that AS 33.16.220(i), as amended by SB 91, did not facially alter the board’s ability to extend a parolee’s maximum release date:

The board may not extend the *period of parole* beyond the maximum release date calculated by the department on the parolee’s original sentence plus any time that has been tolled as described in this section.<sup>6</sup>

Petitioner argues that—notwithstanding SB 55—AS 33.16.220(i), as amended by SB 91, was meant to retroactively invalidate certain board decisions issued before January 1, 2017, that extended a parolee’s maximum release date. But it would be contrary to logic to conclude that where the legislature stated that the express meaning of a statute is not

---

<sup>4</sup> *Stoneking*, 39 P.3d at 523 (discussing the “before, on, or after” language in an applicability clause and concluding that it is expressly retroactive).

<sup>5</sup> SLA 2017, ch. 13, § 30.

<sup>6</sup> AS 33.16.220(i), as amended by SB 91 (emphasis added).


intended to apply retroactively prior to a certain date, it simultaneously meant that a purported implied meaning—here, that AS 33.16.220(i), as amended by SB 91, limits the Board of Parole’s ability to extend a parolee’s maximum release date—is intended to have unlimited retroactive applicability.

Therefore—because the legislature did not intend SB 91 to affect Board of Parole decisions issued before January 1, 2017, that extended a parolee’s maximum release date, and because Petitioner’s maximum release date was validly extended to December 29, 2019, at the December 2015 parole revocation hearing under the applicable law at that time—regardless of whether the superior court correctly concluded that the Board of Parole’s extension of Petitioner’s maximum release date at the September 6, 2017, parole revocation hearing to December 29, 2019, was lawful, the legality of the extension of Petitioner’s maximum release date to December 29, 2019, in December of 2015 was not called into question by the changes to AS 33.16.220(i) under SB 91.

Accordingly, Petitioner’s original claim in this PCR application that under SB 91 his maximum release date was unlawfully extended at the September 6, 2017, parole revocation hearing to June 13, 2019, is MOOT.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 3 May 2021.

  
\_\_\_\_\_  
Dani Crosby  
Superior Court Judge

I certify that on \_\_\_\_\_ a copy  
of the above was mailed to each of the  
following at their address of record:

\_\_\_\_\_  
Judicial Assistant